

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID LEE TERMARSCH and
SHERRY ANN TERMARSCH,

Plaintiffs,

v.

Case No. 05-73137
Honorable Patrick J. Duggan

HOMEQ SERVICING CORPORATION,
DEUTSCHE BANK NATIONAL TRUST
COMPANY, NEW CENTURY MORTGAGE, and
FABRIZIO & BROOK, P.C.,

Defendants.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on December 5, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiffs David TerMarsch and Sherry Ann TerMarsch, husband and wife, filed this lawsuit on August 15, 2005, alleging that Defendants violated various federal laws with respect to Plaintiffs' mortgage on real property in Metamora, Michigan.¹ After Defendants filed motions for more definite statement, Plaintiffs filed an amended

¹On November 18, 2005, this Court issued an Opinion and Order dismissing Plaintiffs' claims against Defendant Fabrizio & Brooks; and on March 13, 2006, the Court issued an Opinion and Order dismissing Plaintiffs' claims against HomEq Servicing Corporation and Deutsche Bank National Trust.

complaint on September 19, 2005. Plaintiffs' amended complaint contains twenty-two causes of action in which Plaintiffs primarily allege that Defendants failed to disclose or provide certain documentation or information with respect to their mortgage. Plaintiffs also claim that Defendants wrongfully refused to accept the "instrument" Plaintiffs tendered in full payment of their loan and then improperly sought to foreclose on the property securing the loan when Plaintiffs failed to submit any further monthly mortgage payments. Plaintiffs seek an order enjoining Defendants from foreclosing on their property, rescission of the mortgage, and monetary damages.²

Currently pending before the Court is a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, filed by Defendant New Century Mortgage ("New Century") on October 23, 2006. Plaintiffs filed a response to the motion on November 13, 2006. On November 17, 2006, this Court issued a notice informing the parties that it is dispensing with oral argument pursuant to Rule 7.1(e)(2) of the Local Rules for the Eastern District of Michigan.

In its motion for summary judgment, New Century argues that "there is no factual or *recognized* legal basis to support the First Amended Complaint filed by the Plaintiffs or the relief sought therein." *See* New Century's Br. in Supp. of Mot. at 2 (emphasis in original). The Court has carefully reviewed Plaintiffs' amended complaint, New

²According to New Century, a Sheriff's sale of the Metamora property took place on May 10, 2006, and the property was sold. *See* New Century's Br. in Supp. of Mot. at 7.

Century's motion, the brief and evidence submitted in support of the motion, and Plaintiffs' response thereto. For the reasons set forth in New Century's motion and accompanying brief, the Court concludes that Plaintiffs fail to state a claim upon which relief may be granted against New Century or that they fail to present evidence to support their claims against this defendant.

Accordingly,

IT IS ORDERED, that Defendant New Century Mortgage's motion for summary judgment is **GRANTED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

David Lee and Sherry Ann TerMarsch
Thomas G. Costello, Esq.
Marilyn H. Mitchell, Esq.
C. Thomas Ludden, Esq.